as he complies with his undertaking — and the Order made thereon to pay the judgment debt by instalments — then the judgment creditor can take no action and cannot, of course, execute for the full amount of the debt. As long as that instalment order made under Order XX Rule 5 remains in force execution cannot be issued on the original judgment, because the effect of the instalment order is that there is no longer a present debt for the full amount of the claim but merely a debt accruing and due by so much a month. If, however, any one instalment is more than one month in arrears then the Order — and the obvious advantage accruing to the debtor thereunder — must be deemed to be vacated and the judgment creditor may levy execution for the full amount of the debt. In addition to levying execution he can issue a judgment debtor summons under Order XXII Rule 2. But what, in my judgment, he cannot do is to proceed forthwith and issue a judgment notice under Order XXI Rule 27(2). In my view Order XXI Rule 27(2) does not apply to proceedings against a judgment debtor for wilfully refusing or neglecting to comply with the provisions of any Order of Court where that Order relates to the payment of a sum of money because such proceedings are expressly governed by the provisions of Order XXII. As I have said, in my view a necessary prerequisite to the issue of a judgment notice under that Order is the issue of a judgment debtor summons and an Order made on that summons. It is the wilful disobedience to the compliance of the Order made on the judgment debtor summons which justifies the issue of the judgment notice.

Lastly, I would only add that even where a judgment notice is issued for wilfully failing or neglecting to comply with the provisions of the Order made on the judgment summons, having regard to the provisions of section 4(9) of the Debtors Ordinance, 1957, (which came into operation on the 1st April, 1958, by virtue of Legal Notification No. 72 of 1958) before the debtor can be committed to prison "it must appear that, since the date of the Order directing payment....." he has had sufficient means to comply with the Order. In the words of McCardie J. in *Neson* v. *Metcalfe* [4] at page 408):—

"That means that evidence of a reasonably direct character is required before this punishment for non-payment of debt can be imposed."

For these reasons I was of the opinion that this appeal ought to be allowed and the Order made by the learned President set aside on the further ground that the wrong procedure had been followed by the judgment creditor in that the issue of the judgment notice on which the committal order was founded was irregular.

I should add here that since the drafting of these grounds of decision Order XXII of the Subordinate Courts Rules, 1950, as it then stood, has been revoked and a new Order XXII headed "Rules Under The Debtors Ordinance, 1957" substituted therefor (see Legal Notification No. 316 of 1958). Such action confirms the view I have already expressed herein that the action taken by the judgment creditor under Order XXI Rule 27(2) was irregular and that the remedy open to him on failure of the debtor to comply with the instalment order made under Order XX Rule 5(1) — since execution proceedings were insufficient to satisfy the debt — was to have applied for a judgment summons under Order XXII Rule 2.

I may say that in arriving at this conclusion I can find no sympathy whatsoever for the appellant. It is apparent that the judgment of the 20th August, 1957, directing payment of $1,635 by instalments of $50 per month was made on the appellant's own undertaking. Since the date of that judgment he has paid the paltry sum of $20. I venture to express the hope that the respondent will be more successful in the future in executing to the full his judgment against the appellant and compelling him to comply with the elementary obligations of honest conduct.

Solicitors: *H. E. P. Powell & Co.; Chew Choon Poon, Esq.*

ISMAIL BIN ABDULLAH v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Good JJ. A.)
September 2, 1959]

[K. L. — F.M. Criminal Appeal No. 22 of 1959]

Criminal Law and Procedure — Jury trial — Summing up — Practice of quoting actual words of Evidence Ordinance — No assistance to jury — Seriousness of offence in evaluating and weighing evidence.

In this case the Court's attention had been invited to one or two passages in the trial Judge's summing-up which considered in isolation could not be approved.

Per curiam: "We very much doubt the wisdom of the practice which seems to be on the increase nowadays of quoting the actual words of the Evidence Ordinance to juries. It has been said both in India and here that it is very much to be doubted whether quoting the actual words of the Evidence Ordinance as they stand can be of any great assistance to a jury. Again there was one passage which considered strictly in isolation suggested that the jury might be justified, if it was so disposed, in disregarding the seriousness of the offence of murder as a capital offence in evaluating and weighing the evidence before them."

COURT OF APPEAL.

H. L. Wrigglesworth for the appellant.

Mohd. Salleh bin Abas (Federal Counsel) for the respondent.

The judgment of the Court of Appeal was delivered orally by,

Thomson C.J.: We have considered this appeal and have most anxiously considered the grounds of appeal which have been very persuasively urged upon us by counsel for the appellant in an address which, if I may say so, acquired

very great strength from the very restraint with which the case for the appellant was urged upon us. Nevertheless we are of the opinion that the appeal should be dismissed.

It has never been in question that about 7th December, 1958, one Abu Kassim was brutally murdered by a number of persons. As far as the present appellant is concerned the question the jury had to decide was whether or not he was one of the persons who took part in that murder. There was a considerable body of evidence which if it was believed showed that he was one of those persons. There was the evidence of an accomplice — a person who had been originally charged but turned King's evidence. There was the evidence of a confession made by the appellant himself before a Magistrate which, if it was believed, implicated the appellant and corroborated the accomplice's evidence up to the hilt.

The question we have to decide here in the light of the way the appeal has been urged upon us, and in our view it was the only way in which it could have been urged upon us, was whether or not the jury was properly and sufficiently directed in relation to that evidence. Our attention has been invited to one or two passages in the trial Judge's summing-up which considered in isolation we cannot approve.

In particular we very much doubt the wisdom of the practice which seems to be on the increase nowadays of quoting the actual words of the Evidence Ordinance to juries. It has been said both in India and here that it is very much to be doubted whether quoting the actual words of the Evidence Ordinance as they stand can be of any great assistance to a jury.

Again there was one passage which considered strictly in isolation suggested that the jury might be justified, if it was so disposed, in disregarding the seriousness of the offence of murder as a capital offence in evaluating and weighing the evidence before them.

Nevertheless, reading the summing-up as a whole we are satisfied that in the end any reasonable jury must have realized that it was their duty to acquit if having regard to everything they were not fully satisfied in their consciences as to the guilt of the accused.

In the circumstances we have no alternative but to dismiss the appeal.

Appeal dismissed.

K. S. PANICKER v. INDIAN OVERSEAS BANK LTD.

[O. C. J. (Ambrose J.) April 25, 1959]

[Singapore — Suit No. 1575 of 1955]

Employment — Contract of — Emigrant bank clerk — Basic salary — Termination of service — Claim for salary and allowances and for damages for breach of contract and wrongful dismissal.

Master and servant — Emigrant bank clerk — Terms of employment — Indian Emigration Act, 1922 — Form of permission and Form of application and letter to Protector of Emigrants — Admissibility under Evidence Ordinance (Cap. 4), ss.92 and 93.

Estoppel — Res judicata.

In this case the plaintiff claimed salary and allowances under a contract of employment and damages for breach of contract and wrongful dismissal. The plaintiff entered the service of the defendant in India as a clerk in 1949, having agreed to abide by the rules and regulations applicable to the defendant's employees. About 9 months later he applied for a transfer to an oversea branch, undertaking to adhere fully to the terms and conditions of oversea service. In due course the defendant decided to transfer him to its Singapore branch. The defendant had to obtain the permission of the Protector of Emigrants, Madras for such transfer. On May 22, 1951, the defendant signed a form of application for such permission in triplicate, and the plaintiff also signed the form, expressing thereon his acceptance of the terms therein. On the same day both parties signed another form in triplicate below the words "Accepted the above terms". The next day the plaintiff presented to the Protector an unsealed envelope containing a letter from the defendant and both forms. The Protector granted the necessary permission subject to certain terms and conditions. Soon afterwards the plaintiff sailed from Madras and arrived in Singapore on June 4, and started work at the Singapore branch of the defendant shortly after. By a letter dated January 10, 1955, the defendant terminated the plaintiff's service with immediate effect for alleged gross misconduct and insubordination and sent him a pay order for a month's salary and allowances in lieu of a month's notice. This pay order was returned by the plaintiff.

Held: (1) the terms of the agreement between the plaintiff and the defendant were set out not only in the form of permission but also in the form of application and in defendant's letter to the Protector dated May 22, 1951, which accompanied the form of application;

(2) there was no inconsistency between the Bank's previous conduct in Suit No. 475 of 1955 and the defence contained in para. 3A of the Further Amended Defence in this Suit, namely, that conditions 10, 12, 14 and 15 of the form of permission did not form part of any contract of employment between the parties;

(3) there was no violation of the provisions of section 25(2) of the Indian Emigration Act, 1922;

(4) as the contract of employment consisted not only of the form of permission but also the form of application and para. 2 of the defendant's letter to the Protector, all three documents were admissible as evidence under section 92 of the Evidence Ordinance, and no evidence of any oral agreement or statement could be admitted by the Court in contravention of section 93 of the Evidence Ordinance for the purpose of contradicting, varying, adding to, or subtracting from the terms of the contract of employment;

(5) the defendant was not estopped from saying that the terms and conditions of the plaintiff's service were less favourable than those contained in the form of permission;

(6) the plaintiff was estopped from saying that the sum of $184.50 set out in para. 5 of the form of application represents his basic monthly salary;

(7) as it was decided in Suit No. 475 of 1955 between the same parties that the contract of employment expired on May 23, 1954, the matter must be regarded as *res judicata*, and the plaintiff was precluded from contending the contrary;

(8) as the plaintiff was employed on a month to month basis after the termination of the three-year contract, one month's notice of termination of his service was reasonable and the claim for damages for breach of contract and wrongful dismissal must therefore be dismissed.